

**Harpswell Planning Board Meeting
Minutes of July 16, 2003****Approved: 8-20-03**

Attendance: Sam Alexander - Chairman, John Papacosma -Vice-Chairman, Howard Nannen, Don Rogers, James Carignan – Associate Member, Noel Musson - Planner, and Amy E. Ferrell – Planning Assistant.

The meeting had been advertised in the Times Record, videotaped, broadcast live on Harpswell TV and recorded. Chairman Alexander called the meeting to order at 6:35 P.M., introduced above members and staff and led the pledge of allegiance.

Approval of Minutes –

Motion – the minutes of June 18, 2003 are accepted as amended. (Motion by Alexander and seconded by Rogers – Carried 5-0)

In the absence of Board Member Dee Carrier, Chairman Alexander appointed James Carignan as a voting member.

Site Visit Review –

Chairman Alexander noted that he, John Papacosma, Howard Nannen, Don Rogers, James Carignan and Noel Musson all attended Site Visits to the property of Thomas Sartini on Catlin Shore Rd., and Marion Genovese Trust (Ken Surette) property on Pond Rd on Monday, July 14, 2003.

OLD BUSINESS –

03-06-02 Estes Lobster House Inc., (Larry Crooker – Owner), Change in Use of a Non-Conforming Structure – 2nd Floor Storage/Office to a Four (4) Bedroom Residence, Shoreland Business, Tax Map 18-108, Harpswell Neck Road, Harpswell.

Applicant Presentation – Orville Ranger, attorney for Larry Crooker, spoke as the applicant's representative. Mr. Ranger referenced the minutes to the last meeting stating there were four issues which remained before the Planning Board. **Issue 1** – Whether a new subsurface waste disposal system can be installed. **Issue 2** – Whether the applicant can convert from a seasonal to a year-round use. Mr. Ranger stated that according to June's Planning Board Minutes, these two issues were to be addressed by the Code Enforcement Office. The applicant disagrees with both these issues. First, no new disposal system has been requested. He feels none is needed, the present system operates properly. Secondly, the applicant is not requesting an expansion of a non-conforming use, but requesting to use the second floor of his existing building as a residence, which is already a conforming use as shown in section 15.1 of the Shoreland Zoning Ordinance.

Issue 3 – Whether or not the application meets the standards of section 13.4.7 of the Basic Land Use Ordinance. He believes these standards have already been discussed in length. The current system which has been tested and examined received written approval from Russell Martin, Program Director of the Wastewater and Plumbing Control, Division of Health Engineering, in a letter dated June 4, 2003. Mr. Ranger highlighted Mr. Martin's experience and qualifications as a registered professional.

Issue 4 – Whether the applicant can change the use of a non-conforming structure. Mr. Ranger stated that section 10.3.3 of the Shoreland Zoning Ordinance seems to have been overlooked by the Town's attorney in this matter. There is no question that the Estes Lobster House is a non-conforming structure. The applicant believes it is obvious that when the Shoreland Zoning Ordinance was drafted, section 10.3.3 was a specific provision to the effect that the use of a non-conforming structure may be changed to another use if the Planning Board determines that this new use will have no greater impact on

a water body or on adjacent properties and resources than the existing use. Previously the Planning Board decided on two separate occasions that the second floor of Estes could be used for storage without restrictions and later for a gift shop. Mr. Ranger pointed out that the official variance prepared by the Town and recorded at the Cumberland County Registry of Deeds for the gift shop contained no restrictions to plumbing.

Mr. Ranger noted that 1) there will be no change in the exterior building dimensions whatsoever. 2) The water usage will be well within state limits, thus having no greater impact. 3) The requested use is a use permitted as a matter of right under section 15.1 of the Shoreland Zoning Ordinance.

Board Discussion – Nannen stated some points addressed by Mr. Ranger dealt specifically with opinions from the Town attorney. He didn't feel he could make a judgment on the merit of either opinion until he had a chance to review both sides. Papacosma indicated that 15.1 of the Shoreland Zoning Ordinance addresses the need for 40,000 sq. feet per residential dwelling unit. Mr. Ranger indicated that the Board had previously approved the use of the upstairs of Estes Lobster House for a storage area and gift shop. Papacosma stated this new proposal was for a dwelling unit which clearly falls under section 15.1. Papacosma stated that he would accept the applicants information of gallons of water used for the current four month use. But, that when you take the remaining eight months, at 360 gallons per day, there is an absolute increase. However, the claim that there will be no additional stress on the resource concerning water usage is secondary; the primary issue is the 40,000 sq. feet minimum lot coverage within the Shoreland Zone. Mr. Ranger requested to know what the interpretation of section 10.3.3 was. Alexander stated the use of a non-conforming structure may not be used unless the Planning Board finds it to have no greater impact on a water body or wetland on the subject or adjacent properties and resources than the existing use. Alexander questioned Mr. Ranger as to how they can say there will be no greater impact when the applicant is proposing to add another use to a property that already has an existing use. Mr. Ranger again referenced the letter from Mr. Martin concerning the water and wastewater disposal system. Alexander wanted to know about the adjacent properties. Mr. Belanger stated that there will be no change to the existing use outside; therefore posing no greater impact. Musson pointed out that the Board needs to decide systematically where they are going. The Board and the testimony keeps jumping back to the subsurface waste issue which isn't something the Planning Board will decide. Musson pointed out that if that were the only issue the Board could condition an approval. The Board also has to address minimum lot size requirements. Papacosma stated the issue is clear that section 15.1 requires that the lot is to be a minimum of 40,000 sq. feet and feels section 13.3.3 is moot. Rogers agrees with comments by Papacosma.

Public Comment - Sam York introduced himself as a property abutter to the applicant's property. From what he has gathered from all the information presented by the applicant it is based on water usage. Mr. Crooker has gone to great lengths to reduce his water usage in preparation for this current proposal. It is his belief that if this is approved all the measures taken to decrease the water usage will be discontinued and water usage will go up. Mr. York also expressed concern over the waste water disposal system and whether or not it functions properly. Changing the structure from seasonal to year-round use, will be an increase. By adding a residence, it is an expanded use, not a change in use; it would also place two dwelling units on one lot.

Karen O'Connell stated to the Board that if there appears to be a conflict with the ordinances, the stricter applies. The ordinances are in place to protect us. She also pointed out that by adding eight months to the existing use by allowing a year-round residence, there would be a 300% increase – and that is an increased impact.

Applicant Response – Mr. Belanger stated the structure is not changing; only using what already exists. The restaurant will still be closing; the reduced flow would be used for a different

purpose/residential dwelling. There's no evidence that this application will not meet the standards of the State and the Town. There has been no evidence that the current system is not working correctly; it has been tested several times.

Board Discussion and Review of Criteria – Papacoma addressed the issue of the water and plumbing as not being issues for this Board but for the Codes Office. What the Board needs to determine is if section 15.1 applies here as the Board understands it and its interpretation of the ordinances. Nannen referred to the letter from the Town Attorney where the Planning Board when acting on an application involving activity in the Shoreland Zone must make a positive finding that the proposed use is in conformance with provisions of section 15 and subsequently written out in detail. Nannen feels the Board and applicant are in agreement that the land "Estes" lot on the west side of the road, (not including the parking lot or other house) is what's being addressed. The Planning Board has the responsibility to apply the stricter standards set forth in the ordinances. Nannen requested that Mr. Ranger be allowed to express his opinion that the proposed use is in conformance with section 15.

Applicant Response - Mr. Ranger doesn't see any conflict, section 15.1 simply sets forth uses that are a matter of right. The ordinance has to be read as a whole and he read section 10.3.3. which is put in as an escape clause to permit the land owner to use his property without taking its use away from the owner so that you don't have an immanent domain without damages procedure. Other provisions of the law, when Mr. Ranger began practicing law, under the common law you could do anything you wanted with your property as long as you weren't creating a public nuisance. The courts have said unanimously throughout this country that doubts about the use of property is to be found in favor of the land owner. The whole idea of this escape clause in 10.3.3 is to give the land owner some benefit of having a building there they would like to make use of. The Board has already recognized the applicant could make use of it two other times. There was nothing said during those times about the need to have 40,000 sq. feet of land in order to have those uses.

Board Discussion – Nannen stated there's a requirement of the Zoning Ordinance which is very specific and seems to be in conflict to section 10.3.3, by Mr. Ranger's reading, but by the Town Attorney's suggestion it appears to be an overriding provision. Mr. Ranger commented that if it wasn't for section 10.3.3 they wouldn't be present tonight. Mr. Ranger indicated the upstairs of Estes was already approved for change of use twice before. Alexander stated that he was a member of the Board that approved the gift shop use and wanted to point out that both those uses were adjunct to the restaurant and did not increase the sewage flow. Nannen stated they were commercial uses and weren't approving change of use, but they were an expansion to an existing commercial use.

Nannen asked abutter, Mr. York, that earlier it was suggested that the Board should be skeptical that the flows may change once approval is made and the portable toilets are perhaps removed. Nannen felt it difficult trying to make a decision or predict this will happen in the future. Nannen asked Mr. York if he had any other information behind that comment. Mr. York responded that historically various changes have been made: paper products, portable toilets, water being trucked in, a well that has been declared contaminated where the leech field had been replaced – approximately 100' from his own private well. If the portable toilets are there for the long term, they should be consider permanent and tasked as such. Given past behavior, he is proposing similar behavior could be seen in the future. Alexander indicated that speculation on what the applicant may or may not do in the future is out of order.

Alexander indicated that Mr. Crooker uses 10.3.3 for the basis of allowance. Alexander indicated this is a change of use of a non-conforming structure, the structure is a restaurant in a business zone, previously the second floor was approved for use as office/storage space initially and later on as a gift shop. 10.3.3. Reads *"The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no*

greater impact on a water body or wetland or on the subject or adjacent properties and resources than the existing use.” Alexander highlighted existing use, all the data submitted on water flow that is the existing use. The ordinance doesn’t state that any excess savings of water use can be applied to allow for a new use. Alexander is also in agreement with Papacosma that the minimum lot area for a dwelling unit in the Shoreland Zone is 40,000 sq. feet and a commercial use for a principal structure has minimum lot area is 40,000 sq. feet, he is in agreement with the Town attorney that the applicant would need 80,000 sq. feet. **Motion – Under the terms of section 10.3.3 and 15.1 of the Shoreland Zoning Ordinance that Mr. Crookers application be denied because it doesn’t meet the minimum lot size requirements nor should we be allowed to let him expand the use because this language is very specific “existing use” no language in here for credits. (Motion by Alexander and seconded by Papacosma – carried 5-0)**

Appeal Procedures – Alexander stated the applicant has 40 days from today to file an appeal on this decision.

NEW BUSINESS –

03-07-01 Thomas Sartini, Reconstruction of Non-Conforming Structure – remove existing cottage/decks and replace with new building, Commercial Fishing I, Tax Map 56-18. Catlin Shore Road, Cundy’s Harbor, Harpswell.

Applicant’s Presentation – Bruce Leland of Long Cove Builders introduced himself as the applicant’s representative. The applicant is proposing to remove the existing structure and decks; replace the existing septic system with a holding tank. The new structure is proposed to increase by the allotted 30% to improve liveability. The new structure will be raised approximately 3 feet higher than the existing floor to be above the flood plain.

Board Questions – Alexander inquired about moving the cottage to the other side of the right-of-way, further away from the water setback and noted a neighbor has their house built on the hill. Mr. Leland mentioned he didn’t have the topographical map done for that area. He was under the impression that they would be able to use the existing footprint. Papacosma stated the issue before the Board is to make it less non-conforming. Papacosma asked what the slope was and the difficulty of building in that area. Mr. Leland indicated he believed it exceeded 30%. Difficulty in building would be access to the structure and expense. Mr. Leland explained that currently the entire building is within the 75’ setback, it infringes on the south side and may infringe on the north. The owners are aware this is a seasonal property and will not be turned into a year-round structure. Alexander asked if the steepness of the property extends to the abutter. Mr. Leland indicated to the best of his knowledge it does. He stated it would be difficult moving the cottage back on the hill for the foundation and accessibility. The move could affect the current well location, and possibly infringe on the existing right-of-way.

Public Comment – Ken Catlin, an abutter, commented that his uncle built the cottage that was elevated on the hill and had to sell it due to the difficulty in accessing it. Mr. Catlin didn’t think it would be fair that the Board make the Sartini’s move the current location of the cottage.

Board Review – Musson noted that section 13.4.7 of the Basic Land Use Ordinance applies to this application. Alexander read from 13.4.7 which states “The Planning Board shall approve, or approve with conditions, a request for a permit in the Shoreland Zone if the Board finds that the proposed use:”

13.4.7.1 – Will maintain safe and healthful conditions. Alexander commented that with the new holding tank it would help to improve the conditions. **Motion – The Board finds the applicant meets the requirements of this section. (Motion by Nannen and seconded by Alexander – carried 5-0)**

13.4.7.2 – *Will not result in water pollution, erosion, or sedimentation to surface waters.* Mr. Leland mentioned he had filed for DEP Permit by Rule and also has submitted an Erosion Control Plan. **Motion – The applicant's proposal satisfies the requirements of section 13.4.7.2.** (Motion by Nannen and seconded by Carignan – carried 5-0)

13.4.7.3 – *Will adequately provide for the disposal of all wastewater.* Alexander stated this is addressed with the installment of the new holding tank. **Motion – The proposal meets section 13.4.7.3 with the condition of State Approval for the holding tank and that this cottage will remain as a seasonal cottage.** (Motion by Alexander and seconded by Rogers – carried 5-0)

13.4.7.4 – *Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.* **Motion – The applicant satisfies the requirements of section 13.4.7.4.** (Motion by Nannen and seconded by Rogers – carried 5-0)

13.4.7.5 – *Will conserve shore cover and points of access to inland and coastal waters.* Existing lawn is being retained, some concrete reduction will occur reducing the impermeable service. **Motion – The applicant conforms to section 13.4.7.5.** (Motion by Nannen and seconded by Alexander – carried 5-0)

13.4.7.6 – *Will protect archaeological and historic resources as identified in the Town's Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service.* **The Board finds this section to be non-applicable.**

13.4.7.7 – *Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries I or II District.* Due to the improvement of the Waste Disposal System will reduce the risk of adverse impact **Motion – The application meets the requirements of 13.4.7.7.** (Motion by Nannen and seconded by Alexander – carried 5-0)

13.4.7.8 – *Will avoid problems associated with flood plains development and use.* Proposed plan will elevate the cottage above the flood plain level. **Motion – The application meets the requirements of section 13.4.7.8 because the structure will be elevated above the flood plain.** (Motion by Alexander and seconded by Rogers – carried 5-0)

13.4.7.9 – *Is in conformance with the provisions of Section 15, Land Use Standards of the Shoreland Zoning Ordinance.* **Motion – The application meets the standards of section 15 of the Shoreland Zoning Ordinance.** (Motion by Carignan and seconded by Alexander – carried 5-0)

Motion – The Board finds the proposed application meets the standards of section 13.4.7 of the Basic Land Use Ordinance and section 10.3.2.2 of the Shoreland Zoning Ordinance. (Motion by Rogers and seconded by Papacosma – carried 5-0)

03-07-02 Ken Surette (Marion Genovese Trust – Owner), Reconstruction of Non-Conforming Structure – Renovate existing structure/add dormers to roof line, Commercial Fishing I, Tax Map 12-144, Pond Road, Harpswell.

Applicant's Presentation – Mr. Surette is proposing to dormer the roof line, change the pitch of the front roof line, remodel the kitchen and bath, install new windows and siding and do some repair work

to the existing foundation.

Board Discussion and Review – A letter was received from the Arnett's concerning the current property owner and their use of their well. Once the property is sold, the new owner will not have access to their well.

Rogers requested to be excused as a voting member due to his close friendship with the abutters. Alexander agreed and excused him from participating in this portion of the hearing.

Mr. Surette stated he was aware that the rights to the well would not transfer with the sale of the property and that he would have to drill his own well. He met with a company that said they would be able to drill a well within a couple of weeks. Mr. Surette plans on having the existing septic system tested and if it needs to be replaced a new holding tank will be installed. Musson mentioned that the Codes Office will require that a septic contractor or site evaluator perform an inspection on the existing holding tank and connections to the structure prior to issuing any permits.

Papacosma stated the area is a rough piece of land. The front of the cottage is approximately 10' from a ledge and the Shoreline setback is approximately 73'. Nannen asked if the expansion was within the allotted 30%. Musson noted the memo from the Codes Enforcement Office stating that it will be in compliance with the 30% law prior to any land use permits being issued.

Public Comment – Benjamin Below, an abutter, expressed concern with the narrow right-of-way which runs in front of the cottage and limited parking. He feels if there is more than one car parked there, it could possibly block the right-of-way. The cottage has not been used since approximately 1975 and when they used it, they were only up approximately four times a year. Nannen mentioned that there was another strip of land approximately 10' in width. Mr. Surette mentioned he could use this strip of land for parking if he had to. Roland Weeman of Great Island stated that if there was another lot adjacent to another lot, it should be combined to make one lot according to our ordinances. Mr. Below stated there is some question as to whether or not that lot physically exists on land; it doesn't exist on tax maps.

Board Discussion – Papacosma doesn't know how the issue of parking can be addressed. Alexander stated that everyone along that shore road is in the same boat, the right-of-way is narrow and parking is limited. Mr. Surette indicated the cottage is only one bedroom and doesn't foresee a parking issue. He feels there is space enough for two cars. Alexander moved the discussion to the greatest practical extent. Nannen stated that requiring any other setback would not be practical because of the presence of rock. Alexander also stated that to try to move the cottage to gain a few feet would eliminate any chance for another parking area. Mr. Surette indicated the setbacks to the north side of the cottage were approximately 7', 11' from the west side, and approximately 20' on the south. **Motion – The applicant meets the requirements of section 10.3.2.2 of the Shoreland Zoning Ordinance and that the present location of the cottage meets the setbacks to the greatest practical extent. (Motion by Nannen and seconded by Papacosma – carried 4-0)**

Review of section 13.4.7 of the Basic Land Use:

13.4.7.1 – Will maintain safe and healthful conditions. Alexander stated this would be met upon approval of the holding tank by the Codes Office.

13.4.7.2 – Will not result in water pollution, erosion, or sedimentation to surface waters. .

Motion – The application meets the requirements of 13.4.7.2 with the condition that erosion control measures are taken during any earth movement during construction. (Motion by Nannen and seconded by Alexander – carried 4-0)

13.4.7.3 – *Will adequately provide for the disposal of all wastewater.* Alexander stated this item would be addressed in the final motion.

13.4.7.4 – *Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.* **The Board finds it won't be affected with proper erosion control measures.**

13.4.7.5 – *Will conserve shore cover and points of access to inland and coastal waters.* **Board finds this section non-applicable.**

13.4.7.6 – *Will protect archaeological and historic resources as identified in the Town's Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service.* **The Board finds this section non-applicable.**

13.4.7.7 – *Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries I or II District.* **The Board finds it won't be affected as long as proper erosion control measures are taken.**

13.4.7.8 – *Will avoid problems associated with flood plains development and use.* **The Boards finds this section non-applicable as it sits well above the flood plain.**

13.4.7.9 – *Is in conformance with the provisions of Section 15, Land Use Standards of the Shoreland Zoning Ordinance.* **Motion – The application meets the standards of section 15 of the Shoreland Zoning Ordinance. (Motion by Papacosma and seconded by Alexander – carried 4-0)**

Motion – The Board approves the application with the condition that the applicant receives approval from the State and Town for the Waste Water Disposal System; and the Board also finds the applicant meets the requirements of 13.4.7 in its totality. (Motion by Alexander and seconded by Nannen – carried 4-0)

Appeal Procedures – Alexander stated the applicant or any interested party has 40 days from the day of this hearing to file an appeal on this decision.

Planners Updates –

Musson welcomed new associate member, James Carignan to the Planning Board.

Planning Office has been working with the Comprehensive Plan Committee to get the first draft out to the public. He feels it would be important to get the Planning Board involved in this review process as other committees in Town are involved. Tentatively a Planning Board Workshop has been set-up for Wednesday, July 23, at 5:00 p.m. at the Town Office. Alternate date is Tuesday, August 5, at 5:00 p.m. at the Town Office. Other items to be addressed at the Planning Board Workshop should be the function of the Planning Board.

Meeting adjourned 8:48 p.m. Atomic Time☺

Respectfully submitted,

Amy E. Ferrell
Planning Assistant